

GEORGE W. WATSON III

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Also admitted in Massachusetts
and Connecticut

November 25, 2020

Kathleen Mignanelli
Siting Board Coordinator
Energy Facility Siting Board
89 Jefferson Boulevard
Warwick, RI 02888

Re: **In re: The Narragansett Electric Company d/b/a National Grid SB 2020-02**
National Grid Response to Memorandum of Town of Portsmouth

Dear Kathleen:

I am enclosing for filing an original and seven (7) copies of The Narragansett Electric Company d/b/a National Grid's Response to Memorandum of Town of Portsmouth. I am sending electronic copies to the Service List and will provide a hard copy to anyone that requests it. Please contact me with any questions.

Very truly yours,



George W. Watson III

Enclosures

Copy to: Docket SB-2020-02 Service List (*via email*)

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

In re: The Narragansett Electric	:	
Company d/b/a National Grid	:	Docket No. SB-2020-02
Petition for Declaratory Order Regarding	:	
Portable LNG Vaporization Equipment	:	
Old Mill Lane, Portsmouth, Rhode Island	:	

**NATIONAL GRID RESPONSE TO
MEMORANDUM OF TOWN OF PORTSMOUTH**

On September 16, 2020 the Narragansett Electric Company d/b/a National Grid (the “Company”) petitioned the Rhode Island Energy Facility Siting Board (“EFSB”) for a declaration that the temporary installation and operation of portable liquefied natural gas (“LNG”) vaporization equipment (“Equipment”) is not subject to the jurisdiction of the EFSB (“Petition”).¹ In its Petition, the Company maintained that the Equipment is not a “major energy facility” as defined by the Energy Facility Siting Act, R.I. Gen. Laws § 42-98-3(d) (the “Act”) and Rule 1.3(16) of the EFSB’s Rules of Practice and Procedure (“EFSB’s Rules”), nor is it an alteration to an existing major energy facility for the reasons stated in the Petition. On October 27, 2020, the Town of Portsmouth (“Portsmouth”) filed a Motion to Intervene, which is currently pending before the EFSB. Three days later, on October 30, 2020, the Town of Middletown (“Middletown”) filed a Motion to Intervene, which included legal argument opposing the Petition. Portsmouth and Middletown are sometimes referred to herein as a “Town” and together, the “Towns”) also filed a Motion to Intervene, which included legal argument opposing the Petition. On November 2, 2020, Portsmouth filed a Memorandum of Town of Portsmouth (“Memorandum”) in opposition to the Petition. The Company files this response because

¹ Unless otherwise defined all capitalized terms shall have the meanings ascribed to them in the Petition.

Portsmouth and Middletown misconstrue certain arguments made by the Company and certain facts related to the Company's consideration of long-term solutions to gas supply constraints on Aquidneck Island. This response also clarifies the record regarding the zoning certificate issued by Portsmouth to the Company.

A Permanent LNG Facility Would Be a Major Energy Facility Subject to EFSB Review and Approval; However, Old Mill Lane Is Not a Permanent Facility.

Both Towns assert that the Company desires to evade all permitting and to permanently locate the Equipment without further review by the EFSB or the Town. This is incorrect.

The Company's problem is this: under the Act and the EFSB's Rules a "major energy facility" is, among other things, one that involves "the conversion, gasification, treatment, transfer or storage of liquefied natural and liquefied petroleum gases." § 42-98-3. On its face, this definition could apply to the Old Mill Lane facility. Neither the Act nor the EFSB's Rules, however, have an emergency exemption, or even any provision for expedited approval. Yet, the Company *must* be able to respond to emergencies immediately without the delay of permitting, even on an expedited basis.

The Company presented two solutions to this problem in its Petition. The first solution is that a temporary facility, like Old Mill Lane, is not an "alteration" of an existing major energy facility, namely the Aquidneck Island natural gas distribution system. There are solid grounds for this approach since a temporary LNG facility would not be a "significant modification" and also would not result in a "significant impact on the environment, or the public health, safety, and welfare." R.I.G.L. § 42-98-3. The second solution is to interpret the Act to apply only to permanent, not temporary, facilities. This, too, would be a rational and sensible approach for the reasons set forth in the Petition.

As noted in the Petition, operating the Equipment at Old Mill Lane is presently the only viable option for maintaining reliable service to Aquidneck Island in response to emergencies and to avoid future emergencies until a permanent solution to the Supply Constraints is constructed and placed into service. Given the ambiguities of the Act, the purpose of the Petition is to determine whether the EFSB agrees that such temporary uses of the Equipment are not subject to its jurisdiction.

The Towns' characterizations of the Company's Petition as an effort to evade or circumvent EFSB jurisdiction are wrong. The Company must serve its customers safely and reliably. That is not only an obligation imposed by law, but it is an obligation and a promise that is at the heart of the Company's mission and one that the Company takes extremely seriously.

There should be no dispute that the Company must have the ability to respond to emergent circumstances without first securing an EFSB license, which can take over a year from filing. On the other end of the spectrum, the Company does not dispute that the long-term or permanent use of sites like Old Mill Lane for LNG vaporization are jurisdictional to the Board. Thus, if the Company were to propose operating the Equipment at Old Mill Lane as the permanent solution, or if the RI Division of Public Utilities and Carriers and/or Public Utilities Commission rejects other proposed solutions and directs the Company to use Old Mill Lane permanently, then EFSB would have jurisdiction, and the Company would immediately turn to preparing an application for the Board's review and approval.

One question remains: when does the use of sites like Old Mill Lane for LNG vaporization become long-term or permanent? The Equipment is indisputably seasonal and temporary.² The

² See National Fire Protection Association 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG), Ch. 14, § 14.1 ("Mobile and temporary LNG equipment shall not remain in service more than 180 days at the mobile and temporary equipment installation.").

issue is that it may reoccur from year to year. Indeed, it has reoccurred at Old Mill Lane, and the Company currently forecasts that it needs to continue to operate the Equipment at Old Mill Lane for another three to four years. It is the reoccurring need pending a permanent solution that led the Company to seek direction from the EFSB, first in the form of a waiver request and now as a request for a declaration of the Board's jurisdiction.

The Company believes that it would be reasonable to require Board approval for temporary facilities that the Company plans to operate on a reoccurring basis for more than six years. The reason for this timeframe is the need to balance the time, money and effort that is required to prepare, prosecute, review and issue a written order on an application against the time that the proposed facility will operate. A full application could take at least two years from preparation of the filing to reaching a final decision. Because these facilities must operate immediately to ensure reliable service, if one assumes that a facility is needed for three years, then by the time that two-year licensing clock expires the facility would only be needed for one more season. That does not seem to be a prudent use of the Board's or the Company's resources. If, however, the required filing was akin to a 90-day Notice of Intent that is required of certain electric transmission projects, then it would be reasonable to reduce that 6-year timeframe. Regardless of the timeframe for filing with the Board, the Company maintains that the operation of a temporary facility must always be done with local approval. As discussed below, the Company did that here.

Portsmouth Clearly Told National Grid that the Zoning Certificate Was Valid Through 2023.

Portsmouth contends in its Memorandum that the zoning certificate allowed National Grid to install the Equipment at Old Mill Lane without zoning relief only during the 2018 heating season. That is a new position that does not comport with its contemporaneous written

communications to the Company. The initial zoning certificate obtained on April 3, 2018 permitted the temporary mobilization of the Equipment to support the natural gas distribution system during the inspection of the lateral pipeline that extends to the island. Once the Company became aware of the need to mobilize the Equipment on a reoccurring basis, it contacted Portsmouth officials in 2019 to discuss continuing to operate that temporary solution during winters through 2023 while the Company researched and developed a permanent solution to the Supply Constraints. Specifically, the Company contacted the Portsmouth Town Administrator on August 29, 2019 to determine whether a new zoning certificate would be required from the Zoning Official. The Portsmouth Town Administrator replied in writing that “a new zoning certificate will not be required.” See Attachment A. On September 8, 2019 the Company again sought clarification from the Portsmouth Town Administrator as to whether the “email response [concerning the zoning certificate] covers National Grid through 2023.” Id. On September 19, 2019, the Portsmouth Town Administrator responded unequivocally, “Yes – my previous response covers National Grid through 2023.” Id. Based on this written communication from Portsmouth, the Company reasonably believed that additional zoning relief was not required for the mobilization of the Equipment at Old Mill Lane through 2023.

Portsmouth’s further contention that the Petition is an attempt to circumvent local zoning requirements is baseless for two reasons. First, the Company did, in fact, coordinate with Portsmouth officials on multiple occasions, and through these discussions the Company received confirmation from Portsmouth that zoning relief would not be necessary for the temporary operation through 2023. But for Portsmouth’s clear indication that the Company could proceed without seeking zoning relief, the Company would have filed for zoning relief. Second, the

Company recognizes that if the EFSB does not have jurisdiction over the temporary operation of the Equipment, then use of the Equipment at any location is subject to local approval.

THE NARRAGANSETT ELECTRIC COMPANY
d/b/a NATIONAL GRID

By its Attorney,

A handwritten signature in black ink, appearing to read "George W. Watson, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

George W. Watson, III
Robinson & Cole LLP
One Financial Plaza, 14th Floor
Providence, RI 02903

ATTACHMENT A

From: [Richard A. Rainer](#)
To: [Albanese, Marisa](#)
Cc: [Watson III, George W.](#); [Afonso, Jacques R.](#)
Subject: RE: EXT || RE: Old Mill Lane - Certificate Inquiry - National Grid
Date: Friday, September 20, 2019 10:02:07 AM
Attachments: [image001.png](#)

Sorry to respond so late. Yes – my previous response covers National Grid through 2023.

r/ Rich



Rich Rainer
Town Administrator
Portsmouth, Rhode Island
Office: (401) 683-3255
Mobile: (401) 787-1453

From: Afonso, Jacques R. <Jacques.Afonso@nationalgrid.com>
Sent: Sunday, September 08, 2019 3:18 PM
To: Richard A. Rainer <rrainer@portsmouthri.com>
Cc: Albanese, Marisa <Marisa.Albanese@nationalgrid.com>; Watson III, George W. <gwatson@rc.com>
Subject: RE: EXT || RE: Old Mill Lane - Certificate Inquiry - National Grid

Good afternoon

Rich,

While I'm out of the office, can you please let Marisa Albanese (cc'd) know if your previous email response covers National Grid through 2023?

Marisa,

If you have any questions or updates please contact George Watson (cc'd).

Hope all is well.

Regards,
Jacques

Jacques R Afonso
Manager, Community & Customer Management, RI
[nationalgrid](#)
280 Melrose Street
Providence, RI 02907
Office: 401-784-4320
Mobile: 401-447-5789
E-mail: Jacques.Afonso@nationalgrid.com

From: Richard A. Rainer <rrainer@portsmouthri.com>
Sent: Thursday, August 29, 2019 4:28 PM
To: Afonso, Jacques R. <Jacques.Afonso@nationalgrid.com>
Cc: Barbara A. Ripa <bripa@portsmouthri.com>; Schuster, Brian E. <Brian.Schuster@nationalgrid.com>; Gary R. Crosby <gcrosby@portsmouthri.com>; Michael A. Asciola <masciola@portsmouthri.com>
Subject: EXT || RE: Old Mill Lane - Certificate Inquiry - National Grid

Jacques,

A new Zoning Certificate is not required.

r/ Rich



Rich Rainer
Town Administrator
Portsmouth, Rhode Island
Office: (401) 683-3255
Mobile: (401) 787-1453

From: Afonso, Jacques R. <Jacques.Afonso@nationalgrid.com>
Sent: Thursday, August 29, 2019 3:04 PM
To: Richard A. Rainer <rrainer@portsmouthri.com>
Cc: Barbara A. Ripa <bripa@portsmouthri.com>; Schuster, Brian E. <Brian.Schuster@nationalgrid.com>
Subject: Old Mill Lane - Certificate Inquiry - National Grid

Hi Rich,
Thank you again for your time earlier today.

Can you please help review if a new Zoning Certificate is required for Old Mill Lane?

Regards,
Jacques

Jacques R Afonso
Manager, Community & Customer Management, RI
nationalgrid
280 Melrose Street
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Office: 401-784-4320
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